

IVA PROCEDURES

The Interim Protective Order

The interim order in an IVA protects the debtor from legal proceedings and enforcement action during the time his proposal is being formulated for submission to the creditors. It may not be necessary where there are a small number of creditors involved only. The effect of the protection is that it is not possible to apply to make the individual bankrupt. Landlords cannot re-enter properties and it is not possible to undertake proceedings or enforce any legal judgements.

The interim order may be applied for by the debtor or by the trustee in bankruptcy in the case of an existing bankrupt. An interim order will usually be made provided the following conditions are complied with:-

- that there is a nominee willing to act;
- that no such order has been granted in the last 12 months;
- that the debtor could petition for his own bankruptcy; and
- that the debtor proposes to prepare an IVA.

The interim order lasts 14 days unless extended. It will be extended provided that the nominee's report recommends a creditor's meeting. Otherwise it will be discharged. At the application for extension, the Court will consider whether there is sufficient possible support. If there is strong enough opposition (more than 25% in value) the Court will not usually grant the order.

Nominee

After the order, the debtor must engage and authorise an insolvency practitioner to act as his nominee and then eventually as supervisor. The nominee must be a licensed insolvency practitioner or be a member of one of the recognised professional bodies.

The debtor prepares proposals and sends them to the nominee. The insolvency practitioner must decide whether the proposal is reasonable, feasible and fair to creditors and debtors. He must consider whether it provides an acceptable alternative to bankruptcy and is fit to be considered by the creditors. The debtor sends a statement of affairs at least two days before the expiry of the interim order.

The nominee applies to the Court with the report and the debtor's proposal. The nominee's report states whether the proposal has a reasonable prospect of being approved and implemented, whether in the opinion of the nominee a meeting of the creditors should be summonsed to consider the proposal and if the meeting is recommended the date, time and place of where it should be held.

If the Court is satisfied with the nominee's report, it is likely to follow its recommendation and convene a meeting. The meeting is usually 14 days after the filing of nominee's report and not more than 28 days from the court order. The Court frequently grants a single order at the time the interim order is granted ordering the creditors meeting to be held. This order continues until after the creditors meeting.

Creditors Meeting

Once an order has been granted, the nominee must convene a meeting of the creditors. The creditor's meeting is held which may approve the proposal, approve with modifications or reject it. A resolution is effective if passed by 75% in value of those attending and voting.

Modifications are allowed under certain circumstances. No modifications can be made that would affect the rights of secured or preferential creditors. The debtor must consent to the modifications.

Creditors who do not support the motion can apply to the Court on the basis of unfair prejudice or material irregularity. If approved the nominee becomes the supervisor. All creditors entitled to vote are bound by the terms of the voluntary arrangement.

In cases where there is no interim order, the meeting must be held not more than 28 days from the date the nominee's report is filed with Court.

It is possible that the creditors may agree to the proposals in advance. Claims may be discussed and agreed by the IP with the debtor and creditors. Where the nominee does not accept the claim for the amount, he will write to the debtor and creditor who can apply to Court, if he is not satisfied with the decision made.

Every creditor of which the debtor is aware, must be notified. The notice of the meeting must include a copy of the proposal, a statement of affairs, a proxy and the nominee's comments on the proposal.

The nominee will usually be chair of the meeting. The chair will conduct the meeting and decide who has the right to vote and how much they vote for. The chair will usually cast proxy votes. Every creditor who is given notice of the meeting is entitled to vote in person or by proxy. If there are doubts about the validity of the claim, the creditor should be allowed to vote, with the vote marked "objected to".

The chairman presents his report to the meeting and allows creditors the opportunity to make comments, questions or propose modifications. The debtor must consent to the modifications. No modifications can be made which affect the right of secured or preferential creditors without their support. The meeting may be adjourned if there is a failure to reach a requisite majority. It cannot be adjourned for more than 14 days.

It is necessary that the proposal be approved by a majority in excess of three quarters in value of those present in person or by proxy, who in fact vote for the resolution. The

value of a creditor's claims will be omitted if written notice of the claim is not given, either at the meeting or before it to the chairman or the nominee or if part or all of the claim is secured. The secured creditor can vote in respect of the unsecured balance.

The legislation tries to secure that persons connected with the creditor cannot force through an acceptance of the scheme. First all the votes are counted. If there is a majority of 75% in favour, then there is a second count counting only those who are not, to the chair's belief, associates of the directors. On the second count, any resolution is not valid if those voting against it include more than half the value of the creditors. This means a simple majority of the valid notified independent creditors can veto an arrangement that might otherwise be approved of by associates of the debtor.

Procedure without an order

It is possible to propose an IVA without an interim protective Court order being in place. This would normally be the case where the debtor is already an undischarged bankrupt. There are no Court hearings involved, but the documents must be filed in Court.

The debtor proposes an arrangement (in practice in consultation with an insolvency practitioner) and sends it to the nominee who accepts the appointment (effectively by prior agreement). The debtor also prepares a statement of affairs. The nominee has 14 days from receipt of the proposals to report to Court. A creditors meeting is held to approve or object to the arrangement. The voting rules are the same as where an interim order is in place.

The Official Receiver must consider whether or not he is willing to act as a nominee and whether or not the proposal should bind all creditors or just the bankruptcy creditors. If the Official Receiver takes the view the proposal has a reasonable chance of success, he will issue the proposal to the creditors and ask them whether or not they accept. The percentage to approve is 75%, under the normal IVA procedure. The rules allow the procedure to be undertaken by correspondence. There is no provision for modification, as in the case of a creditor's meeting.

There is a fast track IVA system which is available only to undischarged bankrupts. The Official Receiver must act as nominee and no interim order is available. This procedure is commenced by the bankrupt submitting a fast track proposal and a statement of affairs to the Official Receiver who must following receipt, consider whether there is a reasonable prospect of it being approved.

Effect of Approval

Once approved, the voluntary arrangement will bind creditors entitled to vote whether or not they are in favour. The approved arrangement binds everyone who is entitled to vote. A creditor can be bound to the IVA, even if he did not receive notice of it. However, those entitled to notice as a creditor who are not notified are entitled to challenge the decision within 28 days of becoming aware.

The chairman of the meeting is obliged to report to Court. After so reporting, he must give the result of the meeting to certain persons. The report to Court must state whether the proposal was approved, rejected or modified. It must also provide such other information as the chair thinks appropriate. It must be filed with the Court within 4 days of the meeting. The chairman must give notice of the outcome of the meeting to those who received notice.

A Government Department maintains a register of IVAs which is open for public inspection at a fee. Immediately after the Chair has filed his report that the meeting has approved the IVA, he is obliged to report to the Secretary of State with the details of the arrangement including details of debtor, creditors approval, name of supervisor and the Court where the report has been filed.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

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